

**Board Meeting Minutes
November 10, 2004**

**Board for Professional Engineers and Land Surveyors
KVIE Public Television Building
2595 Capitol Oaks Drive
Sacramento, California, 95833
(916) 929-5843**

Wednesday, November 10, 2004

Board Members Present: James Foley (President), Gregg Brandow, David Fruchtman, Robert Jones, Millicent Safran, William Schock, Michael Welch, and Dale Wilson.

Board Members Absent: Cindy Tuttle (Vice President), Arthur Duffy, William Roschen, Elizabeth Warren, and Edward Yu.

Board Staff Present: Cindi Christenson (Executive Officer), Gary Duke (Legal Counsel), Susan Ruff (Liaison Deputy Attorney General), Debbie Thompson (Budget Analyst), Nancy Eissler (Attorney General Liaison Analyst), Joanne Arnold (Enforcement & Legislative Programs Manager and Acting Assistant Executive Officer), Tiffany Criswell (Lead Evaluator), and Cindy Fernandez (Executive Analyst)

Public Present: See Attached

1. Roll Call to Establish a Quorum

The meeting was called to order by President Foley at 8:07 a.m. Roll call was taken, and a quorum was established.

Mr. Jones arrived at 8:40 a.m.

2. Public Comment

There was no public comment.

5. Approval of Delinquent Reinstatements (Possible Action)

MOTION: Mr. Wilson/Mr. Schock moved to approve the Delinquent Reinstatements as follows:

Civil

1. Kathy Bucciarelli

Reinstate applicant's civil license once she takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

2. Robert Leo Burns

Reinstate applicant's civil license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

Electrical

1. Sudhir Navnit Kadakia

Reinstate applicant's electrical license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

2. Hoa Phuc Nguyen

Reinstate applicant's electrical license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

3. Terry F. Paradeis

Reinstate applicant's electrical license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

Land Surveyor

1. Robert Despain Kunz

Reinstate applicant's land surveyor license once he takes and passes the California State Specific Land Surveyor Examination, the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

Mechanical

1. Carl Edward Trustee

Reinstate applicant's mechanical license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

2. Thomas Bennett Hartman

Reinstate applicant's mechanical license once he takes and passes the Board's Laws and Rules Examination and pays all required delinquent renewal fees.

VOTE: 7-0, motion carried.

6. Comity and Temporary Authorization Applications (Possible Action)

MOTION: Mr. Schock/Mr. Welch moved to approve the Amended Handout Comity List.

VOTE: 7-0, motion carried.

7. Adoption of Proposed Amendments to Board Rule 473 (Citations of Licensed Persons) (Possible Action)

Ms. Eissler reviewed the information contained in the agenda packet regarding this matter. She explained that only two sets of comments were received regarding this proposed amendment; one was from the Consulting Engineers and Land Surveyors of California (CELSOC), and the other was from the California Geotechnical Engineers Association (CGEA). Ms. Eissler explained that, in their comments, both professional associations stated that, while they understood the Board's reasoning for the proposed change, they believe that all cases involving allegations of violations of the "standards of practice" should be reviewed by a licensee before the Executive Officer is allowed to issue a citation to a licensed person, and not just those cases involving allegations of negligence and/or incompetence, as those terms are defined in Board Rule 404. Ms. Eissler advised that CELSOC had suggested that the language be changed to require expert review in all cases involving "standard of practice issues." Ms. Eissler recommended that the Board rejected these comments and adopt the language as it is proposed to be amended. Ms. Eissler explained that there is nothing in the regulation, as amended, that would prevent the Board from having all citations against licensees reviewed by an expert; this amendment would simply make it so that such review is not mandatory in all cases, just in those that involve negligence and/or incompetence. Ms. Eissler also explained that the terms "negligence" and "incompetence" are used in the statutes and are defined in regulation; however, the phrase recommended by CELSOC is not used in statute or defined in regulation, which could lead to disagreements over the actual meaning of the phrase and to the types of abuse by an overzealous or unscrupulous Executive Officer that CELSOC says its language would help to prevent.

Ms. Eissler also advised the Board that President Foley had received a letter from CELSOC in response to the staff report included in the agenda; in its letter, CELSOC reiterated its opposition to the proposed amendment.

Mr. Welch asked why the professional societies seem so opposed to this proposal. Ms. Eissler explained that, during the original rulemaking process when the Board first adopted the Citation Program regulations, CELSOC was adamantly opposed to any proposals that would have allowed the Executive Officer at that time, who was not a licensee of the Board, to issue citations to licensees without any review by a licensee. Ms. Eissler stated that the Enforcement Unit has never believed it was necessary to include language in the regulation mandating expert review, since such review is done during the course of the complaint investigation as needed. Ms. Eissler explained that such language was not included in the regulations dealing with citations issued to unlicensed persons. Ms. Eissler advised that the Enforcement Unit believes that the proposed amendments address the cases that should be the real concern of licensees, those dealing with negligence and incompetence; in those cases, expert review will still be mandatory.

MOTION: Ms. Safran/Mr. Fruchtmann moved to adopt the amendment to Board Rule 473, as shown, regarding citations of licensed persons and to direct staff to prepare the final rulemaking file for submittal to the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL) for review and approval.

VOTE: 7-0, motion carried.

8. Request for Review of Decision Denying Respondent's Request to Amend Record, as submitted by Ladislav Peter Petrovsky (Possible Action)

Mr. Fruchtmann stated that he was recusing himself from any discussion or vote of this item because he had had dealings with Mr. Petrovsky outside of the Board.

Mr. Duke advised the Board that Ladislav Peter Petrovsky had submitted a petition to the Executive Officer, pursuant to Civil Code section , requesting that his "record," specifically the disciplinary action information posted on the Board's website, be amended. Mr. Duke explained that the information posted had previously been changed in accordance with the decision and order of the Superior Court; the Superior Court decision ordered some changes to the information as agreed by the parties, and these changes had been made; Mr. Petrovsky is now requesting other changes that the Court had not ordered by made. Mr. Duke advised that he, on behalf of the Board's Executive Officer, had sent a letter to Mr. Petrovsky, by and through his attorney Christine Lyden, denying this request. Mr. Duke advised that Mr. Petrovsky, as is his right under the laws, is now requesting that the Board grant his request and change the information in the disciplinary action posting.

Mr. Duke advised the Board that, if the Board denies Mr. Petrovsky's request, Mr. Petrovsky has the right to submit a statement to be included in his file regarding the changes he had requested.

President Foley clarified that the Board had previously made changes, before either of Mr. Petrovsky submitted either of his petitions, and that those changes complied with the decision and order of the Superior Court. President Foley stated that he did not believe the Board should make any further changes to the disciplinary action information since it is in compliance with the Court's order.

MOTION: Mr. Schock/Ms. Safran moved to deny Mr. Petrovsky's request to review the decision denying his request to amend the record and to direct Mr. Duke to send a letter to Mr. Petrovsky, through his attorney, advising him of this decision.

VOTE: 6-0-1, motion carried. Mr. Fruchtmann abstained from the vote.

10. Enforcement

a. Update regarding Rulemaking Proposals, including but not limited to Board Rules 404.1 and 404.2 (Responsible Charge) and Board Rule 418 (Criteria for Rehabilitation) (Possible Action)

Ms. Eissler advised the Board that additional comments were received on the responsible charge rulemaking proposal during the extended public comment period. She reported that staff will review the comments and present them with any recommended changes to the language at the January 2005 Board meeting.

b. Disclosure of Disciplinary Actions on the Board's Website and Modifications to the Board's Disclosure Policy (Possible Action)

Ms. Eissler reported that this item will be discussed at the January 2005 Board meeting.

c. Time Period for Petitioning for Reinstatement of a Revoked License, pursuant to Business and Professions Code sections 6780 and 8785, following a Default Decision and Order (Possible Action)

Ms. Eissler reviewed the information contained in the agenda packet regarding the new statutes which will go into effect on January 1, 2005, setting forth specific time periods that individuals must wait to petition the Board for reinstatement of a revoked license or reduction or modification of a penalty probation order. Ms. Eissler explained that the Board could specify a lesser period of time in its orders of adoption of the decisions and recommended that the Board adopt the policy of setting the time period in Default Decisions and Orders at one year for petitions for reinstatement of revoked license. Ms. Eissler explained that the Board would still have the authority to increase the time period to the maximum three years provided in the statutes if the specific facts in a Default Decision and Order case warranted it.

MOTION: Mr. Wilson/Ms. Safran moved to adopt the policy that all Default Decisions and Orders which order revocation of the license contain a provision that specifies that the respondent may petition the Board for reinstatement of the revoked license not less than one year after the effective date of the revocation and to direct staff to convey this policy to the Office of the Attorney General.

After some discussion, Mr. Duke and Ms. Ruff advised that they believed such a policy would have to be enacted as a regulation, which would prevent the Board from being able to increase the time period if the facts of a particular case warranted it. Ms. Eissler stated that, in that case, she would recommend that the Board not take such action.

VOTE: 0-8, motion failed.

3. **Hearing on the Third Petition for Reinstatement of Revoked License of Dinh Nguyen [OAH No. 2004090378] The hearing on the Petition will begin at 9:00 a.m., or as soon thereafter as the matter may be heard.**

The hearing on the Third Petition for Reinstatement of Revoked License of Dinh Nguyen was held. Following the hearing, the Board went into Closed Session to decide the matter.

4. **Closed Session – Administrative Adjudication [Pursuant to Government Code section 11126(c)(3)] – This Closed Session will be held immediately following the hearing on the Petition.**

In Closed Session, the Board directed the Administrative Law Judge to prepare the written decision on the Matter of the Third Petition for Reinstatement of Revoked License of Dinh Nguyen.

9. **Administrative**

a. **Fund Condition (Possible Action)**

Ms. Thompson reported on the fund condition dated September 20, 2004. Renewal revenue projections for FY 2004-05 increased from \$3,272,000 to \$3,753,000 and application revenue increased from \$3,000,000 to \$3,297,000. Changes to the Board's fund condition since the last Board meeting include the addition of the general salary increase and the Enforcement Positions BCP was moved to FY 2006/07. The Department of Finance did not look at this BCP because the Board's fund condition projects a deficit in the near future. The NCEES cost increase of \$5 to \$10 per exam booklet was also added for FY 2006-07. This will require submittal of a BCP next year.

The Board will go below a one-month reserve in FY 2005-06 and experience a deficit in FY 2006-07 without the additional revenue from the renewal fee regulations. This will occur even if the FY 2006-07 BCP tentative expenditure increases are excluded. Revenue, to date, this FY has remained fairly consistent to last FY.

b. Fiscal Year 2004/05 Budget (Possible Action)

Ms. Thompson reported that the expenditure projection as of September 30, 2004 for FY 2004-05 is \$7,218,755 with a budget balance of \$136,245.

c. FY 2005/06 Budget Change Proposals (Possible Action)

1. Enforcement Analyst Position (Possible Action)

As discussed earlier, the Enforcement Position BCP was denied without review by Department of Finance. Ms. Thompson reported upon requesting further justification for the denial, DOF indicated they would not consider the BCP until after the renewal fee regulations were approved. The BCP would not be supported because the Board projects a deficit in the near future. Most other DCA boards with limited fund reserves also did not get their BCPs reviewed or approved for the same reason.

d. Publication Review

Ms. Thompson reported that the Board is now in the process of getting bids for the update of the Board's bulletin design. Board staff are still updating the City and County Building Official's Guide which is awaiting approval of proposed regulations so that staff can include the most up-to-date information.

e. Pass Through of Exam Application Fees

Ms. Thompson reported that DCA and Mr. Gage, staff to the Joint Legislative Review Committee, indicated they did not consider the NCEES \$25 applicant processing fee an increase. In the event the Board obtains legislative and regulatory approval, the effective date of the new process would be July 1, 2007. Applicants would be required to pay \$25 to NCEES for processing their NCEES exam fees directly once the Board determines they are qualified. Board staff will get together a work group to determine the business process steps needed.

11. Legislative

a. Discussion of Proposed Legislation for 2004, including but not limited to AB 320, AB 1265, AB 1826, AB 1976, SB 1547, SB 1735, and SB 1914 (Possible Action)

Ms. Arnold reported on the information contained in the agenda. She also reported that two bills have been signed by the Governor, the Board's

Sunset Bill and the Omnibus Bill which contained non-substantive amendments to the Professional Land Surveyors' Act.

Ms. Safran questioned why the Governor vetoed AB 320, which would have prevented licensees from including provisions in civil settlements that would prevent consumers from filing complaints with the Board. Richard Markuson, representing CELSOC, advised that the Governor, in his veto message, had stated that he believed the disputing parties have a right to finality of the matter.

b. Regulation Status Report

Ms. Arnold reported on the information contained in the agenda.

12. Examination Qualifications

a. Special Civil Occupational Analysis Study Update (Possible Action)

Ms. Christenson reported that since the update provided at the last meeting, the Questionnaire was mailed out September 9-17, 2004, to 5,000 licensed civil engineers throughout California. The Board requested completed questionnaires to be returned by September 30, 2004. Follow-up reminder post cards were sent out September 27, 2004. Out of the 5,000 surveys sent the Board has received 232 returned with bad addresses making the useable sample 4,768. To date the Board has received approximately 1,810 surveys with 109 indicating they are not working in civil engineering and 11 incomplete surveys making a total of 1,690 usable surveys for a 35.4% response rate so far.

Over the past couple of weeks, Board staff has conducted approximately 150 follow-up telephone calls to individuals in smaller counties to attempt to ensure adequate representation from all counties in California. The Board is still receiving surveys and will continue to collect them for a few more days. Data from the surveys is being input by a vendor and will be analyzed by Office of Examination Resources.

Board staff will have a meeting on January 6, 2004, with Subject Matter Experts to review and discuss the survey data and draft test plan. A proposed test plan will be presented for approval to the Board at the January Board meeting.

b. Amend Board Rules 404 and 424(b) and Repeal Board Rule 460 [Definitions, Experience Requirements & Curricula Approved By the Board] (Possible Action)

Ms. Christenson reported that the proposed changes resulted from the Board's direction to allow 5 years experience credit to those candidates who possess a post-graduate degree from an ABET accredited program irregardless of the undergraduate degree. The rationale behind this

change is that students must make up any deficiencies that result from a review of the undergraduate degree prior to being admitted into an ABET postgraduate program.

MOTION: Ms. Safran/Dr. Brandow moved to approve the draft language and direct staff to commence the rulemaking process.

VOTE: 8-0, motion carried.

c. Amend Board Rule 424.5 [Reinstatement Requirements for Delinquent Applicants] (Possible Action)

Ms. Christenson reported that the proposed changes resulted from the Board's direction to require that applicants who allow a license to lapse for more than 8 years be required to take and pass examinations as if they were a first time applicant. The rationale behind this change is that Board members have been appalled over the fact that some candidates have been practicing without a current, valid license for several years.

MOTION: Mr. Wilson/ Ms. Safran moved to defer any action on this item until a determination as to whether or not to create an "Inactive Status" is made.

VOTE: 8-0, motion carried.

d. Review of Examination Appeal Process and Possibly Amend Board Rules 443 & 444 (Inspection of Examination & Examination Appeal) (Possible Action)

Ms. Christenson reported that effective with the October 2004 examination cycle, the Board will be offering the NCEES SEII examination which is non-appealable per NCEES. The SEII examination is the only examination offered by NCEES which has essay type problems. As a result, the regulations need to be amended to reflect this change. In reviewing the regulations it was noted that other changes were needed to reflect the current format of the Geotechnical, Land Surveyor, and Structural examinations. Additionally, as directed by the Board, staff contacted the psychometricians regarding the scoring range in which people can appeal. In reviewing these issues, other issues surfaced.

Ms. Christenson provided a background of the appeal process. The Board has allowed appeals of its examinations from the time that it started offering examinations; over the years, this policy has changed because of examination security issues and better reliability of examination items. The first change to the policy resulted from the NCEES policy that multiple choice items not be reviewed or appealed; scanning technology and

psychometric data provided after the examination made the scoring almost flawless. Therefore, the Board changed its policy to reflect that of NCEES. At that time, essay type problems remained appealable. Again, over the years, there have been significant improvements to the grading process. Problems are broken into objective elements for the scoring process; for instance, credit is either received or not received for providing the proper method, citing the correct equation, citing correct references, providing the correct answer, etc. Graders spend up to one full day in calibration exercises to assure grader reliability which exceeds 90% in all cases. All examinations are scored twice and, if discrepancies exist, a third round of grading is given.

Ms. Christenson advised that Dr. Raymond Bradley, the psychometrician who oversees the development of the Land Surveyor examination, and Dr. Jay Breyer, the psychometrician who oversees the grading, standard setting and appeals process for the Geotechnical and Structural examinations; have both recommended that instead of having an appealable scoring range, the Board consider eliminating the appeal process altogether. Ms. Christenson advised that this would save the Board money, eliminate examination security issues that can arise during the review/appeal sessions, and would make the state-specific examinations consistent with the NCEES examinations. Ms. Christenson further advised that a concern with eliminating the appeal process is the public policy issue of no longer affording candidates the opportunity to review and appeal their examinations.

Mr. Fruchtman stated that he was concerned with the proposed amendments to Board Rule 444 and would like to discuss them separately.

Dr. Brandow questioned if the proposal of points not being deducted applied to the overall point total or to the points scored on each problem appealed. Ms. Christenson stated that she believed it was the overall point total, but she would have to clarify this with the psychometricians.

MOTION: Mr. Wilson/Ms. Safran moved to adopt Alternative #2 as stated on Page 103 of the agenda packet, which would not eliminate the examination appeal process.

VOTE: 8-0, motion carried.

MOTION: Mr. Fruchtman/Mr. Wilson moved to not amend Board Rule 444 but to leave it as it is currently.

After further discussion, this motion was **withdrawn** by Mr. Fruchtman and Mr. Wilson.

Mr. Jones asked for clarification regarding the first motion approved by the Board regarding Alternative #2, since the items listed under Alternative #2 on Page 103 of the agenda packet includes amending Board Rule 444. After discussion of the actual intent of the Board, the following motion was made:

MOTION: Mr. Wilson/Ms. Safran moved to rescind the vote of the Board on the motion to adopt Alternative #2 as shown on Page 103 of the agenda packet.

VOTE: 8-0, motion carried.

MOTION: Ms. Safran/Mr. Jones moved to adopt the following three items from Alternative #2 and to approve the draft language to amend Board Rule 443, as shown on Page 106 in the agenda packet:

- All NCEES examinations, including the SE II, are not appealable;
- The period of review is changed from 8 hours to 4 hours because that reflects the current length of time offered for the essay portion of each examination;
- The appeal range is changed from 15% to 5%.

VOTE: 8-0, motion carried.

MOTION: Ms. Safran/Dr. Brandow moved to approve the draft language to amend Board Rule 444, as shown on Page 107 in the agenda packet.

VOTE: 4-4, motion failed.

MOTION: Dr. Brandow/Ms. Safran moved to include the issue of possibly amending Board Rule 444 on the agenda for the January 2005 Board meeting.

VOTE: 8-0, motion carried.

**13. Technical Advisory Committee Reports
(No Committee Meetings were held.)**

a. Board Assignments to TACs (Possible Action)

For future TAC meetings, it will be up to the Board Liaison and TAC members to determine when they want to hold the meetings.

14. Liaison Reports (Possible Action)

a. ABET

Mr. Wilson reported on his ABET accreditation visit to Santa Clara University from October 24-26, 2004.

b. NCEES

No report was given.

c. Technical and Professional Societies

No report was given.

15. President's Report

President Foley congratulated the Administrative staff for the award they received from the Department of Consumer Affairs for prompt and courteous service.

President Foley reported that he attended a CELSOC presentation and items discussed included the Title Act Study and the Governor's California Performance Review Report. President Foley will be attending a Structural Engineering meeting in Los Angeles next week; the topic of discussion will be the enforcement complaint investigation process.

16. Executive Officer's Report

1. Administration Report

a. Executive summary report

No additional report given.

b. State budget

No additional report given.

2. Personnel

a. Hiring freeze

Ms. Christenson reported that the paper work is being processed to have Ms. Arnold put into the Assistant Executive Officer position.

b. Vacancies

The Enforcement Manager position will become vacant when Ms. Arnold becomes the Assistant Executive Officer.

3. Enforcement/Examination/Licensing

a. College Outreach

No report was given.

b. Report on Enforcement Activities

No report was given.

c. Report on Examination Activities

Ms. Christenson reported on the October 2004 examination.

4. Publications/Website

a. Website Activity Statistics

No additional report was given.

5. CPR Forums and Report - Status

No report given.

6. Other

a. DCA update

Sunset Hearing date was changed from December 12, 2004, to January 6, 2005. Mr. Lazarian will give a report on the Title Act Study Task Force's findings.

17. Approval of Board Travel (Possible Action)

No Board travel.

18. Closed Session

The Board went into closed session at 12:25 p.m.

19. Open Session to Announce the Results of Closed Session

Ms. Christenson reported that the Board adopted the appeal results of the April 2004 Professional Land Surveying examination.

Ms. Christenson reported that the Board adopted the Proposed Decisions regarding Nick Kazemi and Leslie Curtis Marquoit and adopted the Stipulations regarding Alexei Lukban and Allan Michael Baird.

Ms. Christenson reported that the Board discussed pending litigation as noticed, specifically Michael William Foster v. Board for Professional Engineers and Land Surveyors, El Dorado Superior Court Case No. PC 20030492.

20. Approval of Consent Items (Possible Action)

(These items are before the Board for consent and will be approved with a single motion following the completion of Closed Session. Any item that a Board member wishes to discuss will be removed from the consent items and considered separately.)

a. **Approval of the Minutes of the September 16 & 17, 2004, Board Meeting**

MOTION: Mr. Schock/Mr. Wilson moved to approve the minutes of the September 16 & 17, 2004, Board meeting.

VOTE: 8-0, motion carried.

b. Approval of Candidates for Certification/Licensure (Based on Examination Results, Including Successful Appeals, Adopted in Closed Session)

MOTION: Dr. Brandow/Mr. Schock moved to approve candidates for licensure and certification based on examination results, including successful appeal results and take home examination results, approved in closed session.

VOTE: 8-0, motion carried.

21. Other Items Not Requiring Board Action

a. Date of next Board meeting: January 20 & 21, 2005, Carmel, California

Ms. Eissler reported that at the January board meeting there will be two petition hearings and possibly three regulatory hearings.

22. Adjourn

The Board adjourned at 1:05 p.m.

PUBLIC PRESENT

Carl C deBaca, CLSA

Richard Markuson, CELSOC

Tom Stout, CSPE/CLCPE

Basil Alexander Papaussiliou, University of San Diego, Center for Public Interest Law

Lee Adler, SEAOC

Steve Hao, CalTrans